

Appl. No. : **10/761,895**
Filed : **January 20, 2004**

Remarks

Reconsideration and allowance of the above-referenced application are respectfully requested.

Claims 2-4, 7-10 and 13 stand rejected under 35 USC 102 as being anticipated by Birtwell. Claims 8 and 12 are rejected under 35 USC 102 based on Winchell. Claims 9 and 10 stand rejected under 35 USC 103 as being unpatentable over Winchell in view of Sites. Claims 2-4, 6 and 7 stand alternatively rejected under 35 USC 103 as allegedly being obvious over Shellman in view of Masaoka.

In order to obviate this rejection, claims 2 and 8 have been amended to include limitations which distinguish the claimed pump from any pump in the prior art. Specifically, as described in the original specification on page 5, the pump disclosed in this application relies on the fact that fluid inside a segment having one elastic characteristic has different pressure than liquid inside a segment of some other elastic characteristic. That is, when the same amount of volume expansion is applied to a fluidic system having two different fluidic characteristics, one of the segments experiences a different amount of pressure than the other of the segments. As explained on page 5 of the specification, if the constriction of

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one segment is removed before the pressures in the two segments equalize, then fluid will flow from one to the other.

None of the prior art discloses this specific technique of causing fluid to flow between different fluidic segments. None of the prior art discloses a pumping effect caused by this kind of fluid flow. Accordingly, claims 2 and 8 have been amended to emphasize this distinction over the cited prior art.

Specifically, claim 2 has been amended to recite that the controller " controls said at least one of frequency, phase and amplitude such that the changed cross section of the pump tube is removed before pressure between said tube and said pumped to system is equalized".

Claim 8 has been amended to recite similar subject matter. None of the prior art is in any way suggestive of this subject matter, since all of the prior art is directed to a wholly different mode of pumping.

Initially, the rejection over Winchell has been obviated herein by amendment. Winchell does disclose a system that changes a cross-sectional area. However, Winchell's pumping relies on closing valves 60 and 60a in order to cause the fluid flow. The pumping is not based on controlling such that the changed cross-section is removed before pressure equalizes.

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Winchell operates by closing valves, rather than by removing the constriction.

Birtwell uses a roller type system to cause the flow of fluid. See column 5 lines 55-65. There is no disclosure, suggestion, or any other hint that the system should be operated in a way to remove the changed cross-section before pressure equalizes.

Claims 9 and 10, which were rejected over Winchell in view of Sites should be patentable by virtue of their dependency.

Claims 2-4 and 6 were rejected over Shellman in view of Masaoka. Shellman uses a wave type constriction, see generally figures 2 and 3. There is no teaching or disclosure of removing the changed cross-section before pressure equalizes, as claimed. The secondary reference to Masaoka does teach a feedback system, but does not use that feedback system to remove this "changed cross-section before pressure equalizes" as claimed.

Hence, all the rejections are overcome by this amendment.

This should obviate all remaining rejections in the case, and a notice of allowance is respectfully requested.

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition,

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because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

For all of these reasons, it is respectfully suggested that all of the claims should be in condition for allowance. A formal notice of allowance is hence respectfully requested.

If the Examiner believes that communications such as a telephone interview or email would facilitate disposal of this case, the undersigned respectfully encourages the Examiner to contact the undersigned.

Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me concerning any subject matter of this application by electronic mail (using the email address harris@schiplaw.com). I understand that a copy of these communications will be made of record in the application file.

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Please charge any fees due in connection with this response, (other than those concurrently paid via EFS), to Deposit Account No. 50-4376, small entity.

Respectfully submitted,

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